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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,766	02/22/2002	Gerhard Schubert	5178	1189

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HEAD, JOHNSON & KACHIGIAN
228 W 17TH PLACE
TULSA, OK 74119

EXAMINER

FERGUSON, MICHAEL P

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/080,766

Applicant(s)

SCHUBERT, GERHARD

Examiner

Michael P. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/22/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Claim Objections

1. Claims 1, 4, 5, 7 and 8 are objected to because of the following informalities:

Claim 1 (line 3) recites “ (for example conveyor belts... robots) “. The use of parentheses renders the claim indefinite as it is unclear whether the limitations within the parentheses are part of the claimed invention.

Claim 4 (line 1) recites “said profile member”. It should recite --said profile members--.

Claim 5 (line 2) recites “ , in particular steel or iron”. The phrase “in particular” renders the claim indefinite as it is unclear as to what is positively claimed as the invention.

Claim 7 (line 2) recites “in plan”. It should recite --in plan view--.

Claim 8 (line 2) recites “ , in particular steel or iron”. The phrase “in particular” renders the claim indefinite as it is unclear as to what is positively claimed as the invention.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1 and 3-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Shikoku Kakoki Co., Ltd. (EP 579 334).

As to claim 1, Shikoku Kakoki Co. Ltd. discloses a packaging machine having:

a main frame structure **28,57**;

active elements **17**;

intermediate elements for affixing the active elements to the main frame structure including:

profile members **51,52** respectively arranged in pairs in parallel mutually juxtaposed relationship;

clamping plates **53** for holding the intermediate elements at a defined spacing and having projections which stick up laterally of the profile members; and

a clamping mechanism **56** extending perpendicularly to the longitudinal axis of the intermediate elements between the profile member for clamping the clamping plates (Figure 2).

As to claim 3, Shikoku Kakoki Co. Ltd. discloses a machine wherein profile members **51,52** may be in the form of round profile members (Figure 2).

As to claim 4, Shikoku Kakoki Co. Ltd. discloses a machine wherein profile members **51,52** have a hollow interior (Figure 2).

As to claim 5, Shikoku Kakoki Co. Ltd. discloses a machine wherein profile members **51,52** are of a metal material.

As to claim 6, Shikoku Kakoki Co. Ltd. discloses a machine wherein a clamping plate **53** has a transverse opening at a side in opposite relationship to a side with projections (Figure 2).

As to claim 7, Shikoku Kakoki Co. Ltd. discloses a machine wherein a transverse opening extends in plan view perpendicularly to projections (Figure 2).

As to claim 8, Shikoku Kakoki Co. Ltd. discloses a machine wherein clamping plates **53** are of a metal material.

As to claim 9, Shikoku Kakoki Co. Ltd. discloses a machine wherein a clamping mechanism **56** is a clamping screw (Figure 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shikoku Kakoki Co. Ltd.

As to claim 2, Shikoku Kakoki Co. Ltd. discloses a machine wherein profile members **51,52** are round and wherein clamping plates **53** are applied in overlapping relationship to the periphery of the two profile members of a pair and have projections which stick up laterally of the periphery (Figure 2).

Shikoku Kakoki Co. Ltd. fails to disclose a machine wherein profile members have narrow sides and are flat bar members whose profile stands on edge and wherein

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clamping plates are applied in overlapping relationship to the narrow sides of the two profile members of a pair and have projections which stick up laterally of the narrow sides.

The applicant is reminded that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a machine as disclosed by Shikoku Kakoki Co. Ltd. to have profile members having narrow sides and which are flat bar members whose profile stands on edge as such practice is a design consideration within the skill of the art.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shikoku Kakoki Co. Ltd. in view of Dobrovolny (USPN 5,792,046).

As to claim 9 Shikoku Kakoki Co. Ltd. discloses a machine wherein a clamping mechanism **56** has a conventional bolt head (Figure 2).

Shikoku Kakoki Co. Ltd. fails to disclose a machine wherein a clamping mechanism has a cam lever.

Dobrovolny teaches a clamping mechanism **16,18** having a cam lever **10**; the cam lever enabling one to quickly and easily adjust and readjust the axial position of support rods **12,14** passing through the clamping mechanism (column 6 lines 54-62, Figure 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a machine as disclosed by Shikoku Kakoki Co. Ltd. to

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have a clamping mechanism having a cam lever as taught by Dobrovolny to enable one to quickly and easily adjust the axial position of a main frame structure relative profile members.

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patent shows the state of the art with respect to packaging machine assemblies:

Parlette (USPN 3,605,994) is cited for pertaining to machines having a main frame structure, active elements, profile members arranged in pairs, clamping plates and a clamping mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703)308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1114.

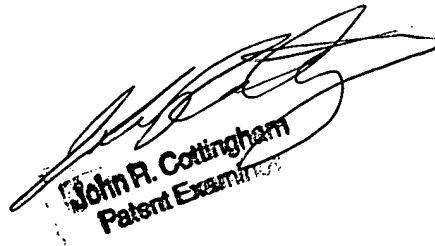
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MPF

July 31, 2003



John R. Cottingham
Patent Examiner